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RIGHTS OF THE CHILD

Written statement* submitted by Human Rights Advocates International,
a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

The Juvenile Death Penalty is Prohibited by Customary International Law and Jus Cogens.

1. Human Rights Advocates (HRA) supports the work of the Special Rapporteur on extrajudicial, summary, or arbitrary executions to abolish the juvenile death penalty. HRA submits the following updated information on juvenile offender executions.

2. International law clearly prohibits the juvenile death penalty, which is the execution of persons who were younger than 18 years old at the time of the crime. It has been two years since the Sub-Commission on the Promotion and Protection of Human Rights affirmed that the prohibition of the juvenile death penalty is customary international law. (The death penalty in relation to juvenile offenders, Resolution 2000/17, adopted Aug. 17, 2000. E/CN.4/Sub.2/RES/2000/17 (2000).) The Sub-Commission noted that several Human Rights Commission Resolutions confirm this customary international law: Question of the Death Penalty, Resolution 1999/61, adopted April 28, 1999, E/CN.4/RES/1999/61 (1999); The Question of the Death Penalty, Resolution 2000/65, adopted April 27, 2000, E/CN.4/RES/2000/65 (2000). Not only does the HRA support these Resolutions by the Commission, but HRA also agrees that the prohibition against executing juvenile offenders has become customary international law. Customary international law prohibiting the juvenile death penalty is comprised of both: (1) state practice, which is evidenced by the long term, wide spread compliance by many nations; and (2) opinio juris, in that nation states believe that the law is not merely desired, but mandatory and required by international law. Both state practice and opinio juris evidence the customary international law prohibiting the juvenile death penalty. Additionally, the HRA considers that this customary international law has risen to the level of a jus cogens norm.

3. First, the practice of states all over the world indicates a practice against executing juvenile offenders. Over time, the practice of nations shows that the juvenile death penalty has become prohibited almost completely. In the last 10 years there have only been six countries, other than the United States, that executed juvenile offenders: Democratic Republic of the Congo (1 in 2000), Iran (6: 3 in 1992, 1 in 1999, 1 in 2000, 1 in 2001), Nigeria (1 in 1997), Pakistan (2: 1 in 1992, 1 in 1997); Saudi Arabia (1 in 1992), and Yemen (1 in 1993). These countries, that are reported to have executed juvenile offenders, since 1991, have since either abolished the practice, acknowledged that such executions were contrary to their laws, or denied that they have taken place. HRA especially welcomes the changes made recently in Pakistan. Not only was legislation implemented, which raised the death penalty eligibility age to 18 years old, but in addition, legislation was passed commuting the sentences of approximately 100 juvenile offenders previously on death row. We also welcome the progress that the Democratic Republic of the Congo (DRC) has made toward complying with the international community in halting the execution of juvenile offenders. In the year 2001, when five juvenile offenders were sentenced to death by the Military Order Court, the executions were stayed and the sentences commuted following appeals from the international community. We hope this is an indication of a new and permanent policy even though there was a reported execution of a 14 year old boy in 2000. We further welcome the statement made last year by the government of Iran, at the Commission on Human Rights, denying that executions of juvenile offenders actually do take place. However despite that statement, Mehrdad Youssefi, was reportedly executed on May 29, 2001 in Iran. He was just 16 years old at the commission of the crime. Despite the few deviations from the norm, almost every country in the world has demonstrated long term, wide spread compliance with the prohibition against executing juvenile offenders.

4. The United States is the most egregious violator of the prohibition against the juvenile death penalty. Although international law clearly renders juvenile offenders ineligible for the death penalty, the United States has maintained this practice since 1976. In the last 10 years the United States has executed more juveniles than any other country with a total of 14 since 1991. In 2000, four juveniles offenders were executed: two in Virginia and two in Texas. Last year another juvenile was executed in Texas, Gerald Mitchell. The state of Texas alone has accounted for more than half of the juvenile offenders executed in the U.S. since 1976 and currently has 31 more juveniles on death row. We were pleased to see that the state court in Texas did stay the execution of Napoleon Beazley, another juvenile offender following international concern. Hopefully the Beazley case is an example of more permanent change to come.

5. Second, opinio juris is comprised of numerous treaties and pronouncements by international bodies. The following treaties prohibit imposition of the juvenile death penalty: International Covenant of Civil and Political Rights (ICCPR); Convention on the Rights of a Child (CRC); Geneva Convention Relative to the Protection of Civilian Persons in Time of War; American Convention on Human Rights; and American Declaration of the Rights and Duties of Man. Also, resolutions by the Sub-Commission on Human Rights, the commission on Human Rights, the Economic and Social Council and the General Assembly oppose the imposition of the juvenile death penalty.

6. Furthermore, HRA considers that this customary international law has risen to the level of jus cogens. Under Article 53 of the Vienna Convention (hereinafter Vienna Convention), a jus cogens peremptory norm is Aa norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.@ The Vienna Convention on the Law of Treaties provides that a norm attain jus cogens status when it is (1) of general international law; (2) accepted by the States as a whole; (3) immune from derogation; and (4) modifiable only by a new norm of the same status. All four elements are satisfied by the international consensus against the juvenile death penalty. First, as stated above, the prohibition of the juvenile death penalty is general international law because almost every country in the world denounces the practice evidenced by the numerous treaties which prohibit it. Second, there is a near unanimous acceptance of the prohibition of the juvenile death penalty which is clear when compared to the prohibition against torture in international law: Every country of the world has accepted the prohibition against torture, yet it has been reported that torture and ill treatment occurred in over 150 countries since 1997. As for the juvenile death penalty only two countries executed juveniles in 2001 (US and Iran) and Iran, in recognition that their practice is an anomaly in the international community claim that the statistics are false. Third, the prohibition is non-derogable. Article 4 of the ICCPR states there shall be Ano derogation@ from Article 6, which prohibits the juvenile death penalty. Fourth, there is no emerging norm that contradicts the current norm. Prohibition of the juvenile death penalty has been universally accepted by all but a few nations. Accordingly, prohibition of the juvenile death penalty is a jus cogens norm from which no country is allowed to deviate.

7. HRA recommends:

-That the Commission request an advisory opinion that the juvenile death penalty is a violation of international law and that the states not yet in compliance officially cease the practice.

-That the Commission encourage remaining countries that are in violation of the prohibition of executing juveniles for which there is almost universal adherence to comply with international norms relating to the abolition of the juvenile death penalty.
-That the remaining countries be required to submit annual reports to the Special Rapporteur of extrajudicial killings outlining their efforts towards prevention of juvenile offender executions and abolition of the practice altogether. HRA asks for specific reassurance from Iran and the United States, the only two countries to have executed a juvenile offender in 2001, that they are making efforts to discontinue the practice completely.
- That the Commission encourage all states to cooperate with the Special Rapporteur.